

MTD Equity Sdn. Bhd. and MTD Chile S.A.

v.

Republic of Chile

(ICSID Case No. ARB/01/07)

Procedural Order No. 2

Considering:

the observations presented by the parties on February 14, 2003 on the effect of the suspension of the proceeding on time limits for filing pleadings and on the future course of the proceeding.

the letter dated February 18, 2003 from the Claimants on certain business records relating to their request for damages (the business records) and referred to by the Respondent in its observations,

the letter dated February 19, 2003 from the Respondent where Respondent indicates that it is prepared to negotiate a revised schedule of the proceeding that fully accommodates the need of the Claimants for adequate response periods,

that Rule 10 (2) provides that "Upon the notification by the Secretary-General of a vacancy on the Tribunal, the proceeding shall be or remain suspended until the vacancy has been filled",

that Rule 12 is entitled generally "Resumption of Proceeding after Filling a Vacancy" and provides that "As soon as a vacancy on the Tribunal has been filled, the proceeding shall continue *from the point it had reached at the time the vacancy occurred*. The newly appointed arbitrator may, however, require that the oral procedure be recommenced, if this had already been started" (emphasis added),

that the Tribunal does not find in the text of Rules 10 and 12 any basis that would indicate that the suspension is limited to actions of the Tribunal as alleged by Claimants. If such had been the intention of the drafters of the Arbitration Rules, they would have qualified the scope of the suspension as is done in the second sentence of Rule 12 which permits, in the case of a suspension taking place during the oral phase of a proceeding, that such phase be recommenced by request of the newly appointed arbitrator,

that according to the minutes of the first session of the first Tribunal constituted in this case each party had equal time to prepare its submissions,

that by letter of the Secretary of the Tribunal, dated October 18, 2002, the parties were informed of the resignation of the Tribunal and the suspension of the proceeding,

that the parties were informed by letter of the Secretary of the Tribunal, dated January 29, 2003, that the Tribunal had been reconstituted and the proceeding recommenced as of that date, and

that as a result the proceeding was suspended during a period of 103 days computed in accordance with Administrative and Financial Regulation 29,

the Tribunal has decided,

that the meaning of the term "suspension" in Rules 10 and 12 of the Arbitration Rules applies to all matters related to the proceeding, including time limits, and not only to matters related to action required from the Tribunal,

that the time limit to present the counter-memorial originally fixed on February 1, 2003 is extended by 103 days to May 15, 2003, and

to direct the parties:

(a) to consult each other on the subsequent schedule of the proceeding and other pending matters, including the matter related to the business records, and

(b) advise the Tribunal of the result of their consultations not later than March 14, 2003.

On behalf of the Tribunal

Andrés Rigo Sureda
President

February 20, 2003